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Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Situation of human rights in Cambodia

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of his Special Representative for human rights in Cambodia, Peter Leuprecht, pursuant to General Assembly resolution 57/225.

Summary

On 27 July 2003, Cambodia held its third National Assembly elections since the signing of the Paris Peace Accords in 1991. These elections mark an important step in Cambodia's efforts to establish a multiparty democracy. Most observers agree that there was a marked improvement in the technical aspects of election administration, that the month-long campaign period allowed for more freedom of political expression than in previous elections, and that polling was conducted in a generally peaceful and orderly manner. However, the establishment of a level playing field for all political parties and of a fully transparent electoral process administered by neutral State institutions still encountered significant obstacles. In the months prior to the official campaign period, arbitrary restrictions were placed on freedoms of assembly and expression and there was significant intimidation, which continued through the campaign. In confronting electoral fraud, vote-buying, intimidation and violence, the National Election Committee failed in almost every case to use its considerable power to impose fines and other sanctions. Although law enforcement officials took some steps to investigate killings of political party activists, the investigative and judicial processes of bringing the culprits to justice remained flawed and ineffective in the majority of cases.

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The process of building democratic institutions and advancing the enjoyment of human rights under the rule of law in Cambodia will require a far greater commitment to ensuring the separation of powers, transparency of executive action, and neutral and accountable State institutions. Reform of the justice sector remains of crucial importance given the centrality of an independent, competent and effective judiciary in establishing accountability. This is an issue that has been repeatedly raised in previous reports of the Special Representative and his predecessors.

Enforcement of the law also remains a continuing problem. Individuals in positions of power and State authority, particularly in law enforcement and the armed forces, are rarely held accountable for their actions, even when serious crimes are involved, and corruption continues unchecked. While some positive developments have occurred with regard to legal and judicial reform, there remains a glaring gap between the "*pays légal*" and the "*pays réel*".

The 1993 Constitution contains human rights guarantees and explicitly incorporates into domestic law the international human rights treaties by which Cambodia is bound. The problem remains one of commitment to implementing these provisions so as to ensure the practical enjoyment of protected rights by Cambodia's people.

With a per capita gross national income of US$ 260, Cambodia remains one of the poorest countries in Asia. According to the *Human Development Report 2003*, it is ranked 130th in the Human Development Index. Some 36 per cent of the population live below the poverty line of US$ 0.46-0.63 a day. Landlessness is an increasing problem, although reliable statistics are unavailable. With Cambodia's traditional social safety net based on land and subsistence farming, it is a struggle to produce enough food to support individual livelihoods and the population. Urban drift is at the root of the growing numbers of squatter settlements in Phnom Penh.

Land continues to be a major source of conflict and of human rights violations in a country where over 80 per cent of the population reside in rural areas and are dependent upon agriculture for their livelihood. The policy of granting large-scale land, forestry and other types of concessions to private companies has serious adverse effects on the livelihood and the human rights of populations living within or close to their boundaries. Nor have such concessions led to human and sustainable development. Further, the Land Law of 2001 requires the adoption of a large number of sub-decrees for its full implementation, which must be done in a manner that is consistent with Cambodia's international human rights obligations.

Policies and strategies allegedly aimed at reducing poverty have been developed without sufficient regard to Cambodia's obligations under the International Covenant on Economic, Social and Cultural Rights and are hampered by problems of disbursement in the education and health sectors. Many problems persist in the delivery of the right to housing, such as forced evictions and the lack of adequate shelter for displaced Cambodians. The Special Representative is concerned that Cambodia's imminent accession to the World Trade Organization — the first least developed country to do so — may adversely impact on the fulfilment of its human rights obligations. He believes that there is a need for informed public debate on this issue.

After many years of negotiation, an agreement between the United Nations and the Government of Cambodia concerning the prosecution under Cambodian law of crimes committed during the period of Democratic Kampuchea was signed in Phnom Penh on 6 June 2003. The trials represent for the Cambodian people an important opportunity for catharsis, healing and coming to terms with the country's recent history. There is a large role for public education efforts to accompany the trials. Independent monitoring of the trials will also be necessary to ensure that they conform fully to international standards of justice, as called for by the General Assembly.

The Special Representative regards the work of non-governmental organizations and other civil society actors as one of the strengths of Cambodian society, and pays tribute to their activities. Yet he has noted a growing tendency on the part of some authorities to dismiss legitimate concerns and complaints as a nuisance, and has been disturbed by acts of intimidation against vulnerable communities striving to protect their rights, such as communities that depend on forests for their livelihood. He underlines the importance of citizens' activities and the necessity of interaction with civil society as essential in a democracy. Cambodia's people must be able to carry out their activities individually and in association with others in accordance with the provisions of the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

Contents

		Paragraphs	Page
I.	Introduction	1–3	5
II.	Activities of the Special Representative of the Secretary-General for Human Rights in Cambodia	4–8	5
	A. Eighth mission to Cambodia	4–6	5
	B. Ninth mission to Cambodia	7–8	6
III.	Major developments and human rights issues of concern	9–75	6
	A. General political climate and the 2003 National Assembly elections	9–24	6
	B. Administration of justice	25–31	9
	C. Compliance with international human rights obligations	32–35	11
	D. Justice sector and accountability	36–45	12
	E. Land and forestry issues	46–61	14
	F. Economic and social rights	62–68	18
	G. Khmer Rouge trials	69–72	19
	H. Refugees and asylum-seekers	73–75	20
IV.	Conclusions and recommendations	76–88	21
	A. Conclusions	76–77	21
	B. Recommendations	78–88	21

I. Introduction

1. The Special Representative of the Secretary-General for human rights in Cambodia was appointed pursuant to the Commission on Human Rights resolution 1993/6 of 19 February 1993 to undertake the following tasks:

(a) To maintain contact with the Government and people of Cambodia;

(b) To guide and coordinate the United Nations human rights presence in Cambodia;

(c) To assist the Government in the promotion and protection of human rights.

2. The present report is submitted in accordance with General Assembly resolution 57/225 of 18 December 2002. It is prepared on the basis of the Special Representative's eighth and ninth official missions to Cambodia and covers the period from January until July 2003.

3. This is the Special Representative's third report to the General Assembly. It builds upon earlier reports to the Assembly and the Commission on Human Rights, the most recent being that submitted to the fifty-ninth session of the Commission (E/CN.4/2003/114), covering the period from July to December 2002. The Special Representative will, in general, attempt to avoid repeating what he has stated in previous reports. However, repetition is inevitable with regard to areas where little or no progress has been made.

II. Activities of the Special Representative of the Secretary-General for human rights in Cambodia

A. Eighth mission to Cambodia

(25 February-4 March 2003)

4. During his eighth mission, the Special Representative focused on the political climate following the riots of January 2003, the preparations for the National Assembly elections, land and forestry concessions, the continuing need for reform of the justice sector, citizens' activities and the negotiations to establish extraordinary chambers for the trials of senior Khmer Rouge figures. Meetings were held with His Majesty King Norodom Sihanouk, representatives of the Government of Cambodia, including Prime Minister Hun Sen, Senior Minister Sok An, Minister of the Interior Sar Kheng, Minister of Agriculture Chan Sarun and Minister for Foreign Affairs Hor Namhong, the National Election Committee (NEC), judges and prosecutors, representatives of civil society, United Nations agencies and members of the diplomatic and donor communities. The Special Representative also visited the province of Stung Treng to familiarize himself with issues in the province and the impact of the operations of a land concession on the human rights of the inhabitants of O'Svay commune.

5. The eighth mission took place at a moment of tension following riots in Phnom Penh on 29 January and in the wake of the murder of Om Radsady, senior adviser to the National Front for an Independent, Neutral, Peaceful and Cooperative Cambodia

(FUNCINPEC) on 18 February. With the upcoming National Assembly elections, the Special Representative dealt extensively with election-related issues. Questions relating to the judiciary, the administration of justice and the legislative process remained high on his agenda.

6. A major area of focus of this mission was the impact of land and forestry concessions on the livelihood and the fundamental human rights of affected communities, including their capacity for creating serious conflict.

B. Ninth mission to Cambodia

(30 June-8 July 2003)

7. During his ninth mission, the Special Representative continued to give priority to the issues raised during his previous visit. He again met with senior ministers of the Government, including Minister of the Interior Sar Kheng, Minister for Agriculture Chan Sarun and Minister for Land Management Im Chhunlem. He also met with leaders of the three main political parties, NEC, judges and prosecutors, members of the Constitutional Council, representatives of civil society and members of the diplomatic community. He visited Battambang province and Pailin municipality, where he met with local officials, provincial election commissions, political party representatives, judges and prosecutors, the Cadastral Commission, victims of a land dispute and non-governmental organizations. He also visited a rubber plantation in Tum Ring, Kompong Thom province. On the day of his departure, the Special Representative released an initial report in connection with the National Assembly elections. A second report will be published when the election process is complete.

8. During his meetings, the Special Representative drew particular attention to the importance of upholding the freedoms of expression, association and assembly during the election period and as part of the broader democratic process, and asked that these rights be guaranteed and protected. He also sought assurances that policing in the post-election period would be carried out in a responsible and professional manner, without the use of excessive force.

III. Major developments and human rights issues of concern

A. General political climate and the 2003 National Assembly elections

9. On 29 January 2003, two weeks after the start of the voter registration period for the National Assembly elections of 27 July, large-scale rioting occurred in Phnom Penh. The Embassy of Thailand and dozens of Thai-owned businesses were attacked and looted by violent mobs. About 20 people received treatment for serious injuries and one woman was shot dead. An adequate explanation for the riots has yet to emerge, and the failure of law enforcement bodies to respond effectively has not been adequately explained by the Government. Senior government figures made public statements linking the political opposition to the riots, although no evidence was produced to support these claims. Approximately 200 persons were arrested during and after the riots, although the majority were later released. Charges remain against some 60 people, ranging from theft and property destruction to criminal

incitement. Those charged with inciting the riots include an independent radio station owner, a newspaper editor and two student youth movement leaders. The two student leaders remain in prison without trial, in contravention of the law stipulating that pre-trial detention should not exceed six months, as do 19 people charged with rioting. Some trials, originally scheduled for June, have been postponed and are unlikely to take place before the formation of a new government.

10. Severe restrictions were placed upon freedom of assembly in the wake of the 29 January riots. While the violence and destruction that took place during those events were deplorable, they do not constitute a valid justification for the subsequent refusal by authorities to authorize a range of planned demonstrations, parades, marches and meetings in both Phnom Penh and provincial Cambodia. Most of these gatherings were banned on public order or national security grounds, the details of which were not provided by the authorities. They include a demonstration planned by the Student Movement for Democracy on 20 March, a non-governmental organization (NGO) voter education drama project planned for several northern provinces in April, a planned march by representatives of women's organizations and victims of domestic violence to the National Assembly on 26 May and a parade to celebrate World Environment Day on 5 June.

11. In cases where demonstrations have taken place without authorization, the Special Representative is concerned at the excessive use of force by law enforcement officers. Sam Rainsy Party members who marched to the National Assembly on 21 May were forcibly dispersed by riot police, with some minor injuries resulting. More serious still was the response to a demonstration at a garment factory on 13 June, which resulted in the deaths of one factory worker and one police officer, and at least 20 other injuries.

12. The limits set on freedom of assembly and the violent dispersal of unauthorized demonstrations are of particular concern in a pre-election period. The Special Representative recognizes the tensions between ensuring the rights to freedom of expression and assembly and preserving public order, but believes that the restriction of these rights has raised questions about the credibility of not only the elections, but also the wider democratic process in Cambodia. A greater commitment is needed to guaranteeing these constitutionally protected rights. Any restrictions of these rights must be limited to those that are necessary in a democratic society and be proportional and narrowly tailored to meet the legitimate objective, in this case preserving public order.

13. During the voter registration period in January-February 2003, there were 10 recorded cases of brief but unlawful arrest and/or detention of opposition activists, which took place while the activists were disseminating party information critical of the Government and conducting other legitimate political activities. While these cases were brought to the attention of NEC by the Cambodia Office of the United Nations High Commissioner for Human Rights (OHCHR/Cambodia), no action appears to have been taken against those responsible.

14. The Special Representative was concerned at the perception among many State actors and institutions that criticism of the Government may amount to criminal incitement and that political party information cannot be disseminated outside the official election campaign period. Political party activists have a right to openly and directly criticize the Government and its policies, as do all Cambodian citizens. Dissemination of information by any person, political party or organization at any

time, regardless of campaign timetables, is not only a constitutionally protected right, but also a prerequisite for a well-informed electorate.

15. In February, two prominent figures were murdered in Phnom Penh. On 6 February, senior monk Sam Bunthouen was shot dead. Twelve days later, FUNCINPEC politician Om Radsady was shot as he left a Phnom Penh restaurant and died a few hours later. An advisor to FUNCINPEC leader Prince Norodom Ranariddh, Om Radsady was the most senior political figure to have been killed in Cambodia since 1997. Within hours of his murder, the Ministry of the Interior publicly stated that theft was the motive behind the attack, thereby prejudging the outcome of its own investigation, and damaging the credibility of the investigation and the Ministry's neutrality. The Special Representative remains concerned by the continuing tendency of Cambodian law enforcement and government officials to publicly declare such cases as being non-political before investigations have been concluded. In March, two military officers were arrested and charged with voluntary manslaughter and robbery. Both men confessed to having accidentally carried out the killing during a robbery, although this explanation is considered highly unlikely by most observers.

16. In April, two members of the judiciary were killed in separate incidents in Phnom Penh. On 9 April, Appeals Court clerk Chhim Dara was shot dead in an attack; his wife was also injured. On 23 April, Phnom Penh Municipal Court Judge Sok Sethamony was shot dead in central Phnom Penh as he drove to work. In a public statement, issued on 15 May, the Special Representative called on the authorities to conduct thorough and impartial investigations into these murders and to prosecute the perpetrators, as well as the people who ordered them. No arrests have been made to date.

17. The methods used in these murders were similar. In each case, the killing was conducted in a public place by a man armed with a handgun, his face hidden by a hat or helmet, who then swiftly escaped on the back of a motorcycle driven by an accomplice. A further murder with the same modus operandi took place on 29 April, when a Chinese factory administrator was shot dead in her car. These murders were carried out in anonymity and with impunity; regardless of motive, they created a climate of considerable anxiety.

18. Some progress has been made in the investigations of 17 murders and suspicious deaths of political party activists and others involved in the electoral process, documented by OHCHR/Cambodia prior to the Commune Council elections on 3 February 2002 (see A/58/268). While convictions have been secured in 10 of these cases, the Special Representative remains concerned about the conduct of the investigations and prosecutions and about the denial of basic criminal process rights, raising serious questions about the reliability of some of the convictions.

19. In the period between the 2002 Commune Council elections and the beginning of the National Assembly election campaign period on 26 June 2003, the OHCHR/Cambodia recorded a further 12 cases of known activists from the three major political parties being killed, including that of Om Radsady. One case involved the double murder of both an activist and his daughter, bringing the total number of deaths to 13. The official election campaign period was relatively free from violence. However, the daughter of a Sam Rainsy Party activist was murdered on 6 August in Kampong Cham province.

20. On 23 June 2003, the Government released a statement, signed by the Prime Minister, that the security forces and authorities at all levels must act with independence and neutrality in their duties, "in order to ensure a political atmosphere of peace, security and safety" and guarantee the human rights of citizens. Unfortunately, this statement was not always respected. Intimidation of both voters and political party activists was observed in many parts of the country in the months preceding the election. This took many forms, including collection of voter identity documents, forced pledging of political allegiance, interference with party signboards, destruction of property, economic threats, threats of renewed armed conflict and death threats. While intimidation continued throughout the official election campaign, there was an overall decrease in violence during this period. Further, there was improved access for political parties to the public service broadcast media during the campaign, in comparison with previous elections.

21. In most cases, NEC, its provincial and local-level subcommittees and law enforcement authorities failed to respond to incidents of election-related intimidation. Only one case is known where the sanctions available to NEC were imposed prior to the elections. In three cases, village chiefs accused of election-related intimidation were temporarily suspended by order of the Ministry of the Interior shortly before polling day.

22. Representatives of several political parties employed racist and xenophobic, and specifically anti-Vietnamese, rhetoric during the election campaign. On polling day, large crowds denied many Cambodians of Vietnamese descent the right to vote at one polling station in Kandal province. Reports have been received of continued harassment of ethnic Vietnamese people during the post-election period. Similar rhetoric used around the time of the 1998 elections was followed by the mob killings of several ethnic Vietnamese persons in Phnom Penh.

23. Polling took place on 27 July without major incident, save for a small explosion near the FUNCINPEC party headquarters in Phnom Penh and the discovery of two grenades with timing devices near the Royal Palace. The technical conduct of the polls was satisfactory in most locations, although there were many reports of registered voters being unable to locate their names on voter lists. The counting process was generally well conducted, although political party observers complained of a lack of transparency at some counting stations.

24. At the time of writing, a political deadlock regarding the formation of a new government has not been resolved. Preliminary results show that the Cambodian People's Party (CPP) received a majority of votes, but has not won sufficient seats in the National Assembly to form a one-party government. The Sam Rainsy Party and FUNCINPEC, the two parties with the potential to form a two-party coalition government with CPP, have declared a lack of willingness to do so. It is to be hoped that the present deadlock will soon be overcome and that a stable democratic government will be formed in the near future.

B. Administration of justice

25. The issue of impunity lies at the centre of problems in the administration of justice and continues to be compounded by the lack of neutrality and independence in the judicial and law enforcement systems, as well as by a low level of professionalism in those bodies. Inadequate funds are allocated to the administration

of justice. The judiciary is subject to executive interference and open to corruption from interested parties. Judges have concerns about their personal security, in the wake of the assassination of Judge Sethamony. Law enforcement officials often fail to enforce court orders and judgements, and sometimes act in open defiance of their terms.

26. Many practices in the criminal justice system do not appear to be sanctioned by law and are contrary to the due process guarantees in the Constitution. Even such basic principles as the presumption of innocence and other guarantees contained in article 14 of the International Covenant on Civil and Political Rights are routinely violated. While there has been some progress in the willingness of law enforcement authorities to investigate crimes that seem to be politically related, much room for improvement remains in the conduct of the investigations and the judicial process that follows in terms of respect for basic principles of fair trial and criminal procedure. There are concerns that convictions secured in some of these high-profile cases are unreliable, reinforcing the widespread lack of confidence in the justice system. In many cases, convictions are based on insufficient evidence or secured in absentia. The readiness of courts to convict solely on the basis of confessions extracted in police custody is commonplace, as are allegations that many such confessions have been extracted under duress. The explicit guarantee in article 38 of the Constitution that confessions obtained by duress are inadmissible as evidence of guilt is rarely respected. Practices of torture and cruel, inhuman and degrading treatment of persons in police custody remain a serious concern, as does the failure to prosecute and appropriately punish responsible officials.

27. Equality before the law and before courts and tribunals is not a reality in Cambodia. Impunity for those responsible for human rights violations, especially the police and military and those in positions of political and economic influence, remains a serious problem. Use of available resources in the justice sector is often skewed and discriminates against the poor. Lack of transport to courts means that trials and appeals are often delayed — exacerbating overcrowding in prisons and extending pre-trial detention — or held in absentia, violating the right of defendants to be present at their own trials. Judges often hand down significant sentences for very minor offences and prosecutors sometimes seek even higher sentences, while the criminal justice system frequently fails to deal with more grave offences.

28. Access to justice could be facilitated by ensuring access to legal advice and representation for Cambodia's poor. Article 76 of the 1993 Law on Criminal Procedure attempts to explicitly incorporate the guarantee, contained in article 14 of the Covenant, of legal assistance to be provided to the accused, free of charge for those without the means to pay. While no data are available to indicate the number of cases conducted without representation, owing to a lack of systematic data collection, many accused persons appear unrepresented before the courts. Further, the overwhelming majority of civil cases, even serious cases such as disputes over land title as the result of land grabbing, are conducted without representation of the most vulnerable parties.

29. The majority of Cambodia's citizens are unable to pay for legal representation and advice. The provision of legal aid is currently left to the Legal Aid Department of the Bar Association and a few NGOs, none of which is State-funded. Nor do these organizations have the necessary resources to deal with the 26,199 cases (9,303 criminal cases and 16,896 civil cases) that were before adjudicate courts

during the year 2002, according to a report of the Council for Legal and Judicial Reform. There is a need to develop a legal aid scheme to provide basic legal services for the poor, including the possibility of a State-assisted legal aid fund as has been established in other countries. The Special Representative welcomes moves to discuss this important issue at a conference later in the year, co-organized by the Ministry of Justice and the Bar Association.

30. Little or no improvement has been observed in the condition of Cambodia's prison population during the reporting period. Cambodia's prisons remain overcrowded, with heavy prison sentences being the standard punishment for even minor offences. Approximately 30 per cent of inmates are in pre-trial detention, with more than 10 per cent of these detained without trial beyond the legal limit of six months. Overcrowding, lack of access to potable water, poor sanitation, disease and inadequate nutrition continue to jeopardize the health of prisoners. Visits by the families of prisoners continue to be restricted and regularly subject to unlawful demands for payment. The United Nations Standard Minimum Rules for the Treatment of Prisoners, which are incorporated into Cambodia's law and prison procedures, are routinely ignored. Although some assistance has been provided by some international organizations, the financing, administration and regulation of Cambodia's prisons remain in need of serious attention. The Special Representative will resume the constructive dialogue he began with the prison authorities and NGOs last year to address these problems on his next mission to Cambodia.

31. In a further demonstration of the failure of the rule of law, cases of mob killing have continued throughout Cambodia, in many instances with the acquiescence or active participation of the police. The Special Representative strongly reiterates the recommendations he put forward in his June 2002 report on street retribution (see E/CN.4/2003/114, para. 28), which have yet to be implemented by the Cambodian authorities. Since the report's release, OHCHR/Cambodia has documented 15 further cases of mob killing.

C. Compliance with international human rights obligations

32. Cambodia is party to the six main international human rights treaties. The 1993 Constitution, which itself contains important human rights guarantees, provides explicitly for their incorporation into domestic law. However, their implementation in practice has been poor and problems of implementation are compounded by a legal system that fails to provide effective remedy to enforce these rights.

33. There continues to be little understanding among government officials and judges that all laws are subject to the Constitution, that they cannot be implemented in a way that restricts the rights and freedoms it guarantees, and that laws are invalid if they are inconsistent with the Constitution. Thus, while the Constitution protects freedom of expression, Cambodia's criminal defamation and disinformation laws have been misapplied to restrict this right, for example, as regards the dissemination of materials by political opposition parties. As noted earlier, significant restrictions have also been placed on freedom of assembly without regard to protected rights.

34. There are few means to enforce legally guaranteed rights in Cambodia, where the judiciary continues to lack independence and professional competence and the Constitutional Council is largely inactive, effectively leaving the country without an institution to rule on the constitutionality of legislation. The Government has faced

critical delays in meeting its international reporting obligations. The Government-established Cambodian Human Rights Committee, which has been entrusted with preparing treaty reports, lacks basic resources, qualified staff and a budget allocation. The Special Representative urges the Government to engage more fully in the reporting processes under the international human rights treaties, established to assist States parties with compliance.

35. The reporting process and implementation of the recommendations of the treaty bodies should be viewed as providing valuable assistance in effectively incorporating treaty provisions into Cambodia's laws and practices. It is thus unfortunate that the Government did not send a delegation to attend the examination by the Committee against Torture of Cambodia's initial report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in April 2003 (CAT/C/21/Add.5). The Special Representative nonetheless hopes that the Government will now give priority to responding to the Committee's provisional conclusions and recommendations (A/58/44, paras. 93-100) in a timely manner, as it has requested, thereby demonstrating Cambodia's commitment to implementing the Convention. He also encourages Cambodia to consider accepting the individual communications procedures under a number of treaties in order to increase accountability and provide a mechanism of redress for victims of human rights violations with no effective remedy available to them at the domestic level.

D. Justice sector and accountability

36. The principle of the separation of powers and the notion that the exercise of power should be subject to legal constraints are enshrined in the Constitution, but are far from being understood and respected in Cambodia. The executive remains reluctant to relinquish power to the judicial and legislative arms of Government. The Supreme Council of the Magistracy is largely ineffectual, effectively leaving Cambodia without an institution to discipline its judges. Members of the Government should be collectively and individually accountable to the National Assembly for the overall policy and individual conduct of government officials as provided for in article 121 of the Constitution. Also fundamental is the establishment of a more open culture in government, which would be assisted by a change in administrative practices and the enactment of freedom of information legislation to facilitate access to information held by public authorities. While the Government has recognized the urgent need for reform and strong anti-corruption measures and has defined specific actions to address these problems, progress has been disappointing. At the mid-term review meeting of the Consultative Group of Donors at the end of January 2003, donors expressed concern over inaction in major reform areas and failure to meet benchmarks agreed upon earlier on reforms in the legal, judicial and social sectors, public administration, fiscal measures and natural resource management.

1. Justice sector reform

37. Since January 2003, there have been some positive developments in the area of legal and judicial reform. Judges and prosecutors have received increased allowances; schools for training judges, prosecutors and legal practitioners have started operating; a national strategy on legal and judicial reform has been adopted and a draft anti-corruption law was approved by the Council of Ministers in June

and is awaiting adoption by the National Assembly. However, few, if any, cases of corruption have been prosecuted in the courts under existing legislation, the Supreme Council of the Magistracy awaits reform and the draft law on the status of judges and prosecutors has yet to be submitted to the National Assembly.

38. At a meeting on 20 June 2003, the Council of Ministers approved a "Justice Sector Reform Programme", described as providing an overall framework for legal and judicial reform in Cambodia. It contains an ambitious draft programme of action, outlining over 90 activities to be undertaken in order to implement the strategy. For this programme to be more effective than its unimplemented predecessors, it will be essential to establish clear priorities and a realistic time frame. Little attention has been given to Cambodia's international human rights obligations and the need for all aspects of the legal reform agenda to be consistent with them. Gender issues are not addressed, nor is juvenile justice. More serious measures will be needed in order to overcome the problem of corruption. The need to draft a number of laws is correctly identified, but the realities of the non-implementation of law in Cambodia are not acknowledged. Nor does the programme address the fact that Cambodia, with its low literacy rates and few trained jurists, requires readily understandable and accessible laws. The proposed programme will be the subject of broad consultations and informed public debate in its further elaboration, and judges and prosecutors should be actively consulted. A strong political will is required to overcome the glaring gap between the "*pays légal*" and the "*pays réel*".

2. Legislative process

39. While commitment is regularly expressed to a participatory law-making process in documents such as the "Justice Sector Reform Programme", the process is not implemented in practice. Some laws and sub-decrees, drafted with donor assistance, have been the subject of public consultations, but often little regard has been given to the comments made.

40. It is also troubling that "line ministries" responsible for drafting laws have tended to leave decisive elements of the laws to be dealt with by sub-decree, proclamation, or even guidelines, thus usurping legislative power. Executive regulations are not subject to public discussion and scrutiny in the form of debate in the National Assembly.

41. Currently, the Penal Code and the Code of Criminal Procedure are being drafted with the assistance of experts from France and the Civil Code and the Code of Civil Procedure are being drafted with the assistance of experts from Japan. It is important that these laws be straightforward and accessible and that consistency between the Codes, as well as with existing legislation, is ensured.

3. Access to government information

42. It remains difficult to obtain access to basic information held by public authorities, even public reports, draft laws that have been tabled in the National Assembly, government instructions and circulars, all of which are often treated as if they were confidential. Civil society groups face considerable problems in accessing information that is in the public interest, as do the media, despite the latter's right to access certain information being provided for in the Law on the Press. The problem

of accessing information is customarily overcome through personal contacts, rather than through institutionalized and transparent mechanisms.

43. The enactment of legislation giving citizens a right of access to information held by public authorities would assist in creating more open and accountable government and informed public policy and debate. Many countries in Asia have either enacted such laws or are about to do so, including Thailand, the Philippines and Japan. The Government and civil service must also show a greater commitment to making information available, especially information relating to issues that are of public interest. The national budget should include provision for the administration of information requests.

4. Corruption and disbursement

44. The World Bank's recent confirmation that it has declared misprocurement on a contract related to the Cambodia Demobilization and Reintegration Project again raised the issue of corruption, which remains endemic through all levels of society in Cambodia. The enjoyment of all rights — be they economic, social, cultural, civil or political — is seriously undermined by the phenomenon of corruption. Despite the absence of broad public consultation prior to the adoption by the Council of Ministers of the Anti-Corruption Law, the move towards enacting such legislation is welcome. However, it needs to be accompanied by a commitment at the highest levels to prosecute cases of corruption. While existing provisions of the criminal law relating to corruption, bribery and embezzlement are adequate, the problem lies with the failure to prosecute under these laws. The Coalition for Transparency has continued with its work of mobilizing support towards tackling these issues in 2003.

45. The Special Representative has long been concerned about problems of low and slow disbursement of national budget allocations and their impact on the health, education and judicial reform sectors. For example, less than 10 per cent of the total health budget for 2003 was released for the first half of the year. The issue of disbursement has recently been drawn to the attention of the Ministry of Finance by the Social Sector Working Group, and a task force is to be established to deal with this issue.

E. Land and forestry issues

46. Land continues to be a major source of conflict and of human rights violations in Cambodia, where over 80 per cent of the population is dependent upon agriculture for their livelihood. The Special Representative continues to question the Government's policy of granting large-scale agricultural, forestry and other concessions to private companies, in particular their adverse effects on the livelihood and fundamental human rights of affected communities. In the case of large-scale agricultural plantations, concessionaires are permitted to clear private State land for exploitation, including forest land (see para. 53 below), and have rights of control over land almost as expansive as those of owners. According to a list provided by the Ministry of Agriculture, Forestry and Fisheries to OHCHR/Cambodia in February 2003, the Council of Ministers has approved 40 land concessions for agricultural purposes covering approximately 800,000 hectares, or 4 per cent of Cambodia's territory. Most were granted between 1996 and 2000 and 25 involve contracts between private companies and the Government, covering

approximately 700,000 hectares. Forest and land concessions together cover approximately 20 per cent of Cambodia, thereby exacerbating problems of access to land for the general population.

47. While such concessions are made in the name of development, they have not always benefited the communities that depend upon them, nor led to human and sustainable development. The establishment of many large-scale agricultural plantations has created conflicts and contributed to the impoverishment of local populations living close to or within their boundaries by destroying the forest and their sources of income, limiting the extension of agricultural land for future generations and forcing local inhabitants to give up their traditional livelihood to become cheap labour for concession companies. However, in certain cases these companies create few or no jobs for the local population. The presence of the companies has also created a climate of fear in some of the affected areas, with armed guards — often former military personnel — employed to defend company interests. According to the list provided by the Ministry of Agriculture, Forestry and Fisheries, 16 of the 25 concessionaires have complained about new settlers encroaching on concession land and about conflicts with and complaints from local people. Since most concessionaires pay neither the required deposit nor rental fees to the State, it is hard to see what contribution they are making to the country and the welfare of its people.

48. The Special Representative has now visited two land concessions (Cambodia Haining Group Company Ltd. in Kompong Speu and Flour Manufacturing Company Ltd. in Stung Treng) and one rubber plantation (Tum Ring rubber plantation in Tum Ring commune in Kompong Thom), where he met with local people and discussed the impact of the companies' activities on their livelihoods.

49. In 1999, the Flour Manufacturing Company Ltd. was granted 7,400 hectares of agricultural land inside a forest zone where villagers from O'Svay commune farmed and collected products from the nearby forest. In 2001, after having cut down large areas of dense forest the previous year, the company bulldozed a 100-hectare area of land, most of which was primary forest. It also restricted the access of local people to the remaining forest and to agricultural land belonging to the concession. The local people have been increasingly concerned about their deteriorating living conditions and the destructive effects of the company's activities on the natural environment and wildlife.

50. In Tum Ring commune in Kompong Thom province, a 6,400-hectare area of forest was excised from three forestry concessions in 2001 and classified by sub-decree as a "State public establishment rubber plantation" operated by the Chup Rubber Plantation Company. The social and economic impact on the local populations has been severe. The local communities were not consulted, and more than 2,000 people who previously earned their livelihood in the ricefields, tapping resin trees and collecting forest products have seen much of their forests destroyed and have lost their incomes. It is doubtful that this traditional society will have the will and the skills to adjust to rubber plantation activity. Furthermore, hundreds of resin trees have been felled in breach of the Forestry Law and the Government's own condemnation of illegal logging. Large parts of primary forest have been cut and the land bulldozed. The proposal of a logging company to transport logs from the rubber plantation to an outside sawmill in contravention of the moratorium on transporting round logs has generated considerable concern and protest. In spite of

the moratorium, big logs fraudulently declared as firewood are driven out of the area. The Special Representative wrote a letter to the Prime Minister at the conclusion of his ninth mission to draw to his attention the serious situation in Tum Ring and to request his assistance.

51. The Land Law still requires the adoption of a large number of sub-decrees and proclamations for its provisions to be fully implemented. Most importantly, the Sub-Decree on Land Concessions for Economic Purposes and the Sub-Decree on Procedures for the Reduction and Specific Exemptions of the Land Concessions that exceed 10,000 hectares must be prepared and adopted swiftly. Fourteen concessions are over 10,000 hectares, the maximum size permitted by article 59 of the Land Law, and will need to be reduced in size. The largest concessionaire is Pheapimex Company Ltd. in Pursat and Kompong Chhnang provinces (315,000 hectares). It is a matter of grave concern that a concession was granted on 23 November 2001 to Green Sea Industry Company in Stung Treng province (100,852 hectares) several months after the adoption of the Land Law, in clear contravention of article 59. The Special Representative hopes that no further concessions will be granted pending the adoption of these two sub-decrees.

52. Several land concession companies do not comply with the law and have otherwise violated the terms of their contracts — for instance, by failing to pay the required deposit and rental fees, not exploiting the land within the first 12 months, or failing to delimit boundaries and undertaking illegal logging outside the boundaries of the concession. According to the information provided by the Ministry, only nine concession companies have paid a deposit and only six have delimited boundaries. The Special Representative has recommended that the contracts of those concessionaires that are violating the law or are in serious breach of the terms of the contracts be cancelled. He is encouraged by the promised cancellation of five land concession contracts announced by the Minister of Agriculture during the Special Representative's eighth mission, although he notes that these concessions are not significant in size.

53. Land concessions should no longer be granted in areas covered by primary forest, which is contrary to the Land Law, and contracts awarding concessions situated in primary forest areas should be immediately withdrawn. Primary forest is considered to fall within the definition of "public State land" while land concessions are only permitted on "private State land". In order to help clarify these matters further, the Government should also adopt a law on State land, in order to define private State land and public land.

54. The Sub-Decree on Land Concessions for Social Purposes was adopted on 19 March 2003, a welcome development. The objective of the sub-decree is to define the criteria, procedures and mechanisms for granting social concessions for residential use and/or subsistence cultivation. The Ministry of Land Management plans to establish a pilot project in several provinces to start implementing the sub-decree, which must be applied with regard to Cambodia's international human rights treaty obligations. The Special Representative maintains a concern about the location of the lands attributed for social concessions, as the sub-decree does not specify the obligations of the State to establish in social concession areas infrastructure such as schooling and access to health and employment opportunities for the populations concerned, in accordance with its obligations under the International Covenant on Economic, Social and Cultural Rights and the

International Covenant on Civil and Political Rights. He is also concerned about the small amount of land available for social concessions since much of the land that would be appropriate for social purposes is now controlled by large forestry or industrial agricultural concessions.

55. The Forestry Law, which came into effect on 31 August 2002, also requires the adoption of several sub-decrees and proclamations for its full implementation. While the objective of this legislation is to regulate the management and administration of Cambodian forests in a sustainable way, illegal logging continues in forestry concession areas. The Sub-Decree on Community Forestry is still being drafted; it must be adopted as a matter of priority in order to protect the rights and interests of forest-dependent communities and to provide an adequate legal framework for community involvement in the sustainable management of the forests and their resources.

56. The Land Law delegates considerable powers to the executive branch of Government. Yet it is difficult to obtain access to information relating to land concessions, such as contracts and maps, which concern matters of significant public interest. These difficulties have highlighted the urgent need, as noted earlier, to develop open administrative practices and policies and to adopt and implement freedom of information legislation.

57. The Government has sought to establish a system of land distribution since 1979. Cambodia is now embarking on a process of economic development that is generating new pressure on the rural poor. Demographic pressures; precarious, unsettled populations, with many coming from former refugee camps; the opening to a market economy and speculation leading to land grabbing by powerful people are among the problems it faces. With the ending of armed conflict, large tracts of land have also become valuable, tempting the military to declare ownership rights over former battlefields and uncontrolled remote areas.

58. Many land disputes involve disputes between villagers and private companies, State institutions and members of the military. The traditional system of conciliation has its limits, requiring more formal institutions of resolution. At present, neither the Cadastral Commission structure, established in July 2002, nor the courts function effectively to resolve land disputes or to provide remedy for related human rights violations.

59. Thus far, no case has been resolved by a Cadastral Commission. The Ministry of Land Management recently indicated that all members of the Cadastral Commission at national and provincial levels were fully trained in land dispute settlement procedures and that all documents and forms used in the dispute settlement process had been provided. However, before the Commissions can become operational, funds must be disbursed to meet investigation, transportation and administration costs.

60. The Special Representative met with victims of land conflicts from Kos Kralor district in Battambang province during July. The difficult and complex situation in Kos Kralor is illustrative of the wider land problem in Cambodia, involving hundreds of poor and vulnerable families confronting powerful interests. He sees their plight as exemplifying recurring problems in the administration of land and the weakness of the mechanisms for dealing with land disputes and related violations of human rights. He discussed the situation in Kos Kralor with the authorities in

Battambang and Phnom Penh and has urged a rapid and just solution to the conflict that will meet the needs of the affected population. He received an assurance that, pending such a solution, the people concerned will stay where they are.

61. Non-governmental organizations and groups working to protect natural resources, and communities dependent on these resources, must be able to conduct their activities in a secure environment. In his last report to the Commission on Human Rights, the Special Representative discussed the violent dispersal of representatives of forest-dependent communities on 5 December 2002 outside the Department of Forestry and Wildlife (E/CN.4/2003/114, para. 59). Following this event, OHCHR/Cambodia received reports that a forestry network operating in Cambodia's north-eastern provinces of Kratie, Strung Treng and Mondulkiri faced intimidation and threats from local authorities. On 10 February 2003, after several declarations of intent to do so, the Government's Advocate General filed a complaint with the Phnom Penh Municipal Court requesting charges of disinformation and incitement to the commission of a crime to be filed against Global Witness coordinator Eva Galabru. The complaint was eventually dropped at the end of that month under pressure from NGOs and the donor community. Understandably, these events have led some local organizations to limit their activities until they can carry out their work in safety.

F. Economic and social rights

1. Housing and relocation issues

62. While urban drift is at the root of the growing number of informal settlements in Phnom Penh, several factors have resulted in the displacement and permanent relocation of large numbers of people in Phnom Penh: private investment, the increasing value of land in urban areas, infrastructure development and natural disasters. The urban poor remain particularly vulnerable to forced evictions. Article 29 of the Land Law provides that any attempt to occupy vacant land after the Law came into force in August 2001 shall have no legal effect. Large numbers of people wait for land distribution from the State through concessions for social purposes. From a broader policy perspective, the right to housing guaranteed in the International Covenant on Economic, Social and Cultural Rights is not taken into account in the formulation of national housing policies.

63. The Special Representative continued to examine several issues relating to relocations, including those relating to relocation sites. The practical set of relocation guidelines developed by NGOs in August 2001, with the involvement of the Municipality of Phnom Penh, have yet to be fully utilized by the authorities. The Special Representative discussed this matter with Kep Chuk Tema, the recently appointed Governor of Phnom Penh, during their meeting in July. He also drew to the Governor's attention the continuing plight of the some 800 families in Anlong Krognan who remain without land, despite promises made by his predecessor.

64. In May 2003, the Urban Poor Development Fund requested the authorities to develop housing policies for poor communities in urban areas. The Governor of Phnom Penh, in a subsequent letter to the Prime Minister, requested the Government to grant land to families living in four squatter settlements in Phnom Penh. In a welcome development, the Government responded positively to this request on 8 July. This will help to upgrade the shelter conditions of these families.

2. Accession to the World Trade Organization

65. Cambodia's entry into the World Trade Organization (WTO) is expected to be approved by the Ministerial Conference to be held in September 2003 in Cancun, Mexico, making it the first least developed country to join the organization. Some non-governmental and civil society organizations have raised the concern that there has been too little explanation and public debate on the conditions to which the Government has agreed and on how entry into WTO will contribute positively to poverty reduction and to the realization and enjoyment of human rights by Cambodia's people.

66. Cambodia's accession to WTO raises important human rights concerns. Some observers have commented that opening the country's health-care system to foreign health-care providers and drug companies could damage efforts to establish a viable health-care system for all. The introduction of intellectual property protection might also negatively affect drug prices and availability. The impact of agricultural trade liberalization could also have an adverse effect on rural lifestyles, rural employment and food security.

67. There are concerns that a process of accession and negotiation that compels Cambodia to accept conditions that are not appropriate for the local situation could adversely affect a majority of the population. Although trade liberalization may offer prospects of economic growth and development, the costs of adjustment, often borne by those who are most vulnerable, must be taken into account. The extent to which trade liberalization will help to eradicate poverty will depend on its form, pace and sequencing.

68. WTO membership will provide a legal framework for the commercial dimension of trade liberalization. The social dimensions will need to be addressed through the legal framework established by the norms and standards of human rights. Economic, social and cultural rights set comprehensive objectives for trade liberalization that go beyond commercial objectives by establishing benchmarks of minimal achievement.

G. Khmer Rouge trials

69. The agreement between the United Nations and the Government of Cambodia concerning the prosecution under Cambodian law of crimes committed during the period of Democratic Kampuchea was signed in Phnom Penh on 6 June 2003, following a process of negotiation that took several years. The National Assembly has still to approve the agreement, as required by the Constitution, and many practical steps need to be taken before the establishment of the Extraordinary Chambers, within which the trials will be conducted.

70. This should be Cambodia's first serious attempt at dealing with the crimes that were committed during the period of Democratic Kampuchea and with the legacy of its recent past. It is hoped that the trials will promote a better sense of justice and reconciliation in the society more generally. There is a large role for public education in the period preceding and during the trials. Cambodia's non-governmental organizations, and individuals such as Cambodia's acclaimed film director Rithy Panh, are well placed to develop and undertake such programmes. They should receive the support that will be necessary to enable them to do this. It is

hoped that the trials, together with public education efforts, will help to establish and acknowledge the facts of Cambodia's recent history and help to repair the suffering that has been inflicted on its people.

71. Independent monitoring of the trials will also be essential to ensure that they conform fully to international standards of justice, as called for by the General Assembly. If the trials are conducted in proper and independent manner, and if those most responsible are held accountable for the crimes they committed, it may be easier to confront continuing impunity and to reform institutions such as the police, the judiciary and the courts.

72. Cambodia ratified the Rome Statute of the International Criminal Court (ICC) on 11 April 2002, a development welcomed by the Special Representative in a previous report. Just as Cambodia is about to bring those responsible for grave breaches of international law to trial, the Special Representative was dismayed to read reports in June that Prime Minister Hun Sen has agreed to enter into a reciprocal bilateral agreement with the United States of America, preventing the surrender to ICC of United States nationals in Cambodia and of Cambodian nationals in the United States.

H. Refugees and asylum-seekers

73. On 25 July 2002, dissident Vietnamese monk Venerable Thich Tri Luc, who had been granted refugee status by the Office of the United Nations High Commissioner for Refugees (UNHCR) in Cambodia, "disappeared" from a Phnom Penh guesthouse. While no information was forthcoming regarding his whereabouts for more than a year, recent reports in the press and from NGOs indicate that he is being held in detention in Ho Chi Minh City awaiting trial on unspecified charges. When coupled with numerous reports last year that Montagnard asylum-seekers were forcibly returned to Viet Nam, Thich Tri Luc's fate brings into question Cambodia's will to comply with its international obligations under the 1951 Convention relating to the Status of Refugees.

74. As previously reported, few members of ethnic minorities from Viet Nam's central highlands (known collectively as Montagnards) have been able to seek asylum in Cambodia since the closure and destruction of a camp operated by UNHCR in the border province of Mondulkiri on 15 April 2002. Since the beginning of 2003, only 24 Montagnard asylum-seekers have been able to safely reach UNHCR offices in Phnom Penh to have their claims determined. It is not possible to assess how many asylum-seekers may have failed to reach their destination. UNHCR continues to be denied the free access to the border areas that it needs in order to enable it to examine the claims of those seeking asylum. There are also credible reports that those who have assisted the Montagnard asylum-seekers have been subject to harassment by local authorities.

75. As the Special Representative has repeatedly stated, Cambodia must comply with its international obligations under the 1951 Convention and the 1967 Protocol, relating to the Status of Refugees in particular the core principle of non-refoulement. The forcible deportation of refugees and asylum-seekers to countries where they risk torture and ill-treatment also contravenes Cambodia's obligations under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

IV. Conclusions and recommendations

A. Conclusions

76. **The Special Representative welcomes improvements in the conduct of the National Assembly elections and hopes that these will be built upon in the conduct of future elections and that a commitment will be demonstrated to overcome some of the problems that continue to be encountered. In this regard, he will issue a second report on the National Assembly elections once the election process is complete.**

77. **As the Special Representative has stated on many previous occasions, he feels a deepening commitment to the welfare of Cambodia and its people. He hopes that the process of forming a new Government will proceed peacefully. As demonstrated by this and previous reports, the new Government will need to address many problems in the effort to build democratic institutions and secure the observance and enjoyment of human rights in Cambodia. The Special Representative is convinced that these problems can be overcome. It is in this spirit that he puts forward the following recommendations. Others are to be found in the body of this report.**

B. Recommendations

1. Justice sector and accountability

78. **The Government must take steps to reform the justice sector in order to establish an independent judiciary, an ethical legal profession and discipline among judges and prosecutors and to fight corruption effectively.**

79. **The Government should give priority to providing access to justice for the poor and design and establish a legal aid scheme appropriate to Cambodia.**

80. **Access to information held by public authorities has to be provided and legislation giving citizens the right of access to such information should be enacted and implemented, thereby assisting the effort to build open government, inform public debate and reduce corruption.**

2. Administration of criminal justice

81. **The police and the courts must ensure the impartial enforcement of the criminal law. In particular, they must ensure neutrality in the conduct of all investigations and prosecutions, including of those cases relating to suspicious deaths where political motives may be involved.**

82. **The Government and law enforcement officials must ensure that all demonstrations are policed in a responsible and professional manner and without the use of excessive force.**

83. **Restrictions on freedom of assembly should be limited to those strictly necessary in a democratic society, be proportional and be narrowly tailored to meet the legitimate objectives.**

3. Land and forestry issues

84. **The Government should continue its review of land concession contracts and their implementation to ensure that they comply with Cambodian law and related sub-decrees. It should cancel contracts where concessionaires have committed serious breaches of the law or their contracts and ensure that all remaining contracts are brought into compliance with the law.**

85. **The Government should ban the granting of land concessions in areas of primary forest and cancel existing concessions in such areas.**

86. **The Sub-Decree on Land Concessions for Economic Purposes and the Sub-Decree on Procedures for the Reduction and Specific Exemptions of the Land Concessions that exceed 10,000 hectares must be prepared, adopted and implemented swiftly. No further concessions should be granted pending the adoption of these sub-decrees.**

87. **The Government should adopt the Sub-Decree on Community Forestry in order to protect the rights and interests of forest-dependent communities and to provide an adequate legal framework for community involvement in the sustainable management of forest resources.**

4. Non-governmental organizations

88. **Non-governmental organizations and Cambodia's citizens must be allowed to carry out their work in accordance with the provisions of the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.**